

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF OHIO
3 EASTERN DIVISION

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5 UNITED STATES OF AMERICA,)
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) Case No. 1:18CR00022

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13 TRANSCRIPT OF PROCEEDINGS HAD BEFORE THE HONORABLE
14 JUDGE SOLOMON OLIVER, JR., JUDGE OF SAID COURT,
15 ON WEDNESDAY, MAY 15TH, 2024,
16 COMMENCING AT 10:00 O'CLOCK A.M.

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21 Court Reporter:

22 GEORGE J. STAIDUHAR
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1 APPEARANCES:

2 On behalf of the Government:

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6 On behalf of the Defendant:

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1 P R O C E E D I N G S

2 (Case called.)

3 THE COURT: Good morning. Will counsel for
4 the United States introduce himself for the record?

5 MR. SHEPHERD: Matthew Shepherd on behalf of
6 the United States.

7 Good morning, your Honor.

8 THE COURT: Good morning.

9 And will counsel for Phillip R. Durachinsky
10 introduce himself for the record, themselves.

11 MR. THOMPSON: Good morning, your Honor.
12 Darin Thompson with the Federal Public Defender. To my
13 right is Phillip Durachinsky, and to his right is
14 co-counsel, Christian Grostic.

15 THE COURT: Thank you. I asked my courtroom
16 deputy to set this hearing because I received word
17 through the Marshal Service that that bags of material I
18 guess and information that was stored for Mr. Durachinsky
19 was destroyed at the county jail, the Mahoning County
20 Jail, and I obviously felt the need to make further
21 inquiry.

22 The Marshal has assured has shared with us
23 information that they have, and we have received other
24 submissions from the Mahoning County Jail relative to the
25 matter.

1 The parties will recall that Mr. Durachinsky
2 has certain information, which he kept there at the
3 Mahoning County Jail. He had indicated over time that
4 those papers were important to him and others materials.

5 And so I had asked the Marshals to make sure
6 that they communicated to the Mahoning County facility
7 that those materials were to be maintained for him.

8 And the Marshals indicated that they did
9 make that known, make known to the Mahoning County jail
10 those materials were not to be destroyed, but they were
11 to be maintained.

12 Now, the reason this came up was that I sent
13 Mr. Durachinsky away for a competency determination. So
14 that was -- the question was what would happen to his
15 other documents and other possessions?

16 And so the order was that they should be
17 maintained.

18 And then he came back to the facility, but
19 after I made the determination that he was not competent
20 to stand trial, I had him committed to the custody of the
21 Attorney General so that they could make a determination
22 whether there was substantial probability in the
23 foreseeable future whether he would attain the capacity
24 to go forward.

25 That latter evaluation has taken place, but

1 the report has not yet been received.

2 Meanwhile, Mr. Durachinsky was sent back,
3 and he is back, as I understand it, at the Mahoning
4 County Jail. It was in that context of his coming back
5 that we were notified that his materials were no longer
6 available, and they had been destroyed

7 Mr. Durachinsky's case was filed quite a
8 long time ago. It is complex. It has a range of charges
9 of different types, serious charges, and he has had a
10 number of counsel, and he has had expert assistance
11 during the course of the trial.

12 And we've had also the interruption because
13 of the competency evaluation and then competency, later
14 competency evaluation to determine whether he could
15 attain the capacity to proceed.

16 He has been very involved in his trial, not
17 his trial, but his representation, sometimes writing
18 letters to the Court; other times urging his counsel to
19 take certain positions.

20 So I just make that as an observation that
21 he seems to have been among the most active Defendants
22 that I have had in Court before me. It is not a positive
23 or negative comment, but it is just a factual one.

24 So I just wanted to -- I felt the necessity
25 to make a record because this was an important matter,

1 because I was careful to try to make sure that those
2 papers were preserved; they were not.

3 And so I just need to -- I can't be informal
4 about this was my feeling. It is not a hard feeling
5 toward anybody, or it is just -- I can't proceed without
6 having a record, a record that is more than e-mails and
7 so forth.

8 I don't intend to spend a long period of
9 time. I don't intend to make this a hearing where I call
10 all of the possible people who know something about this.

11 My thought was I would start by just
12 confirming with the Marshal Deputy what he knows and what
13 he understands as it relates to communicating this to
14 Mahoning, any other relevant information he has, and I
15 would be interested in hearing from a responsible
16 supervisor as to matters and what they know.

17 I understand that Officer Morlan is involved
18 in a disciplinary hearing. So I don't -- currently. I
19 won't say I won't change my mind -- I don't currently
20 intend to ask him, put him under questioning, but I won't
21 say it won't happen, but I would rather not do that. So
22 that's how I would like to proceed, and I ask Marshal
23 Matt Crossman to come forward.

24 DEPUTY CROSSMAN: Good morning, Judge.

25 THE COURT: Good morning, how are you doing?

1 DEPUTY CROSSMAN: Not too bad. How about
2 yourself?

3 THE COURT: Oh, I doing all right. I know
4 you've already communicated my order to Mahoning but just
5 go ahead and tell me what took place, what you know from
6 your end.

7 DEPUTY CROSSMAN: Absolutely, Judge. So on
8 June 7th, 2023, we were in receipt of your order
9 regarding the property. On June 9th, 2023, investigative
10 analyst, Jeff Alexiak, sent that order to Mahoning
11 County. The Defendant then went away on his study on
12 June 27th.

13 On August 3rd, 2023, Attorney Thompson had
14 requested confirmation that none of the property was
15 destroyed. So on August 3rd, I resent the order to
16 Mahoning County and asked for confirmation.

17 On August 7th, Captain Koontz confirmed that
18 the property was secured in the property room. The
19 Defendant again left for a study on 12-27-2023, and then
20 May 7th, now 2024, Captain Koontz called me and then
21 e-mailed me regarding that the property was mistakenly
22 destroyed, and then the following day is when I related
23 to your chambers.

24 THE COURT: Thank you. That would have been
25 on May 8th?

1 DEPUTY CROSSMAN: May 8th, yes, sir.

2 THE COURT: All right. I may call you back,
3 but I just wanted to cover that part first.

4 Thank you.

5 DEPUTY CROSSMAN: Yes, sir. Thank you.

6 THE COURT: All right. Now, who would speak
7 on behalf of Mahoning County? Would that be Captain
8 Koontz or Lieutenant Dugan?

9 CAPTAIN KOONTZ: That would be captain,
10 myself.

11 THE COURT: All right. Can you come to the
12 podium, please. Good morning.

13 CAPTAIN KOONTZ: Good morning, your Honor.

14 THE COURT: State your full name for the
15 record.

16 CAPTAIN KOONTZ: Kenneth Koontz. I am a
17 captain with the Mahoning County Sheriff's Office.

18 THE COURT: How long have you been there?

19 CAPTAIN KOONTZ: I have been there 33 years
20 this year.

21 THE COURT: What are your responsibilities
22 generally?

23 CAPTAIN KOONTZ: I am the jail administrator
24 for the corrections division.

25 THE COURT: All right. And can you

1 first verify, if you can, that Mahoning did receive
2 information from the Marshal's office as Marshal Crossman
3 indicated?

4 CAPTAIN KOONTZ: Yes, we did.

5 THE COURT: And he told you about my order
6 that the papers should be maintained?

7 CAPTAIN KOONTZ: Correct.

8 THE COURT: And you followed those -- when I
9 say "you," I don't mean you -- but Mahoning County
10 followed those orders up until the time the papers were
11 destroyed. Is that right?

12 CAPTAIN KOONTZ: Yes. We took steps to make
13 sure it was secured in the property room, and we always
14 have bags of property from inmates that left.

15 What makes this unique is because we marked
16 the property with Inmate Durachinsky's name on it and
17 said "do not destroy per Lieutenant Dugan."

18 He is the one that I assigned the detail to
19 when I received the Court order.

20 THE COURT: And what's in that room where
21 his property was stored.

22 CAPTAIN KOONTZ: Yeah, it is all inmate
23 property. Some property belonged to inmates that were
24 still there, and other property is inmates that have left
25 the facility.

1 THE COURT: And how do you distinguish
2 between those three kinds of property when you --

3 CAPTAIN KOONTZ: The property that the
4 inmates are still there is marked in a -- it is kept in a
5 property bag. It is a black and white bag, like a mesh
6 bag.

7 It hangs on a carousel similar to a dry
8 cleaner, and everything is inventoried in there. When an
9 inmate leaves and they come out and takes their property
10 with them for whatever reason, it is placed in a paper
11 bag and placed on the shelf.

12 THE COURT: Okay. So when one walks into
13 the room, one can distinguish by how the property is
14 kept, whether it is property of an inmate that is there,
15 whether it is property or someone like Mr. Durachinsky
16 whose property is marked "do not" -- what did it say "do
17 not" --

18 CAPTAIN KOONTZ: "Do not destroy."

19 THE COURT: And then what about the property
20 that is left behind by inmates?

21 CAPTAIN KOONTZ: We ended up -- we destroy
22 that after a while. Everything except for the valued
23 property, watches, jewelry, that kind of thing, we keep
24 that, and we pursue a Court order to have that auctioned
25 off years later.

1 THE COURT: Now, how many bags of property
2 were for Mr. Durachinsky?

3 CAPTAIN KOONTZ: We are actually unsure
4 about how many bags were there. Some people say there
5 was three. That's probably like the common number, three
6 bags of properties.

7 THE COURT: Okay.

8 CAPTAIN KOONTZ: But there was originally
9 five bags, but apparently, somebody said there was only
10 three.

11 THE COURT: Did you -- have you seen the
12 bags yourself?

13 CAPTAIN KOONTZ: Yes.

14 THE COURT: You seen them marked?

15 CAPTAIN KOONTZ: Yes.

16 THE COURT: Okay. And we can take hearsay
17 here today.

18 Captain -- I am sorry, the Lieutenant Dugan,
19 he saw the bags before?

20 CAPTAIN KOONTZ: Yes.

21 THE COURT: He saw them when they were
22 marked "do not destroy"?

23 CAPTAIN KOONTZ: That's correct.

24 THE COURT: And are there other people --
25 who works the property room and would make decisions

1 about which things would be destroyed and which ones
2 won't?

3 CAPTAIN KOONTZ: It is really kind of crazy
4 because of our collective bargaining agreements, we have
5 daily job bidding, so everyday there is somebody
6 different that works in the property room depending on
7 their seniority.

8 THE COURT: Okay. So the person who works
9 the property room today and knows that the property says
10 "do not disturb," once they know that, they don't come
11 back the next day or the next day and work that room.

12 CAPTAIN KOONTZ: I'm sorry, your Honor.

13 THE COURT: I am just trying verify what you
14 said. Maybe I didn't ask the question very clearly, but
15 if I work the property room and I see that the bags say
16 "do not destroy," when I come back the next day, I don't
17 have to give it any thought at all because I have seen
18 those bags.

19 CAPTAIN KOONTZ: Exactly.

20 THE COURT: But it may be somebody is going
21 to walk into the property room who has never worked it
22 before, and they have to familiarize themselves with
23 what's there, correct?

24 CAPTAIN KOONTZ: That's correct, yes.

25 THE COURT: But were the bags marked clearly

1 -- clearly marked "do not destroy"?

2 CAPTAIN KOONTZ: Yes. As I remember the
3 bags, it was brown paper bags, and they were marked with
4 black Sharpie marker on the bag "do not destroy per
5 Lieutenant Dugan."

6 THE COURT: Okay. How did you find out that
7 the property was destroyed?

8 CAPTAIN KOONTZ: When I came to work that
9 morning, one of the -- Lieutenant Dugan and another
10 sergeant advised me that the bags were destroyed on night
11 shift a couple days previous to me reporting for work,
12 and they had checked the dumpster from what I understand.
13 The dumpster had already been emptied twice. It is
14 emptied every night.

15 THE COURT: And once the dumpster is emptied
16 where does it go, landfill or what?

17 CAPTAIN KOONTZ: Yes. I would assume it
18 would go to a landfill.

19 THE COURT: Do people -- as people rotate
20 into the property room, are they given instructions about
21 property in the room?

22 CAPTAIN KOONTZ: Yes. There is policies
23 they have to follow, but usually when somebody works
24 there, they are familiar with it, how things work in the
25 property room.

1 THE COURT: Does an individual person have
2 the authority to destroy property?

3 CAPTAIN KOONTZ: They would have the
4 authority to destroy property as long as it is not valued
5 property. Our policy says that anything over 30 days is
6 destroyed. We usually don't do that because people have
7 a hard time getting to the jail, so it is usually 60 to
8 90 days, after that we do destroy it.

9 THE COURT: So someone who destroys the
10 property, they would have to inquire as to whether the
11 property has been there 60 days or 90 days, right?

12 CAPTAIN KOONTZ: Correct.

13 THE COURT: And this is for property where
14 persons have left the facility?

15 CAPTAIN KOONTZ: Yes, that's correct.

16 THE COURT: With no instructions to maintain
17 their property?

18 CAPTAIN KOONTZ: Correct.

19 THE COURT: But so there is authority for an
20 individual in the property room to destroy property,
21 which -- for which there is no instruction; in other
22 words, if an inmate is no longer there and for a period
23 of 30 to 60 days?

24 CAPTAIN KOONTZ: Yes. And it would sit on
25 the -- it would be the same thing, it would be in a paper

1 bag sitting on the shelf with the inmate's name on it and
2 when they left the facility.

3 THE COURT: But that wasn't the status of
4 Mr. Durachinsky's bag.

5 CAPTAIN KOONTZ: No. No, your Honor. His
6 was the only bags that I can remember that were marked
7 "do not destroy."

8 THE COURT: And they were marked you say in
9 letters sufficient so that anyone looking at the bag
10 would have to read them if their eyes were open.

11 CAPTAIN KOONTZ: Yes, that's correct.

12 THE COURT: And it is your feeling that once
13 they left and thrown in the dumpster, that after a period
14 of two or three days, there would be no place to go and
15 look for them?

16 CAPTAIN KOONTZ: That's correct.

17 THE COURT: All right. I am going to see if
18 either counsel has any questions that would further
19 develop the record if they feel I have missed anything.
20 Mr. Thompson. Well, either way.

21 MR. THOMPSON: Did you speak to the deputy
22 who destroyed the property?

23 CAPTAIN KOONTZ: Yes.

24 MR. THOMPSON: What explanation did he give
25 for how this happened?

1 CAPTAIN KOONTZ: At first he said the
2 property wasn't marked. But after the short
3 investigation, finding out that other people that worked
4 the property room noticed that it was marked "do not
5 destroy per Lieutenant Dugan.

6 MR. THOMPSON: Okay.

7 CAPTAIN KOONTZ: And he does have a
8 disciplinary hearing coming up I think next week.

9 MR. THOMPSON: Are there cameras inside that
10 property room?

11 CAPTAIN KOONTZ: No, sir.

12 MR. THOMPSON: And you indicated there
13 hasn't been a prior circumstance, which property has been
14 marked "do not destroy"?

15 CAPTAIN KOONTZ: No, not that I can
16 remember.

17 MR. THOMPSON: You are not certain how
18 many bags we are talking about, whether it is three or
19 five?

20 CAPTAIN KOONTZ: No. I am unsure whether it
21 is three or five.

22 MR. THOMPSON: Was the property inventoried
23 before it was put into storage?

24 CAPTAIN KOONTZ: I don't believe so.

25 MR. THOMPSON: The notes in the property

1 that were in the property, I assume they were never
2 scanned into electronic form?

3 CAPTAIN KOONTZ: No. The only thing that we
4 still have are his -- we have three -- I believe there is
5 three disks, I am not sure, might be just two disks of
6 his discovery that was sent from one of his attorneys.
7 That was kept somewhere separate than the property room.

8 MR. THOMPSON: One moment, your Honor.

9 THE COURT: All right.

10 (Pause.)

11 MR. THOMPSON: I don't have anything else at
12 this point, your Honor. Thank you.

13 THE COURT: All right. Mr. Shepherd?

14 MR. SHEPHERD: Yes, your Honor. I just have
15 one thing I wanted to clarify.

16 Captain Koontz, when this property was
17 destroyed, was that of like a plan -- "inventory" is the
18 wrong word -- but a plan like destruction of excess
19 property, like an annual cleaning out or anything?

20 CAPTAIN KOONTZ: Yeah, it doesn't happen
21 annual; it happens probably about once a month maybe. If
22 somebody has been there -- the policy says after 30 days.
23 And it is in the inmate handbook, and we usually give
24 them a little extra time because I know sometimes
25 families come down, and it is usually 60 days or 90 days,

1 and then it is just a rotation?

2 If somebody is gone that long, the property
3 is usually destroyed.

4 MR. SHEPHERD: So is that just -- I guess
5 what I am getting at, so the person on night shift, that
6 deputy, he is destroying property like that, just sort of
7 a regular part of the duties of the deputy on night
8 shift?

9 If there is extra time, whoever is in charge
10 of the property room -- if there is extra time -- they go
11 check and see what can be destroyed, or is this like,
12 you know, it is the first of the month. We go look in
13 the property room and get rid of any excess property that
14 has been there 90 days?

15 CAPTAIN KOONTZ: No, it just occurs.

16 MR. SHEPHERD: So it is just one of the
17 duties of a person who might be there?

18 CAPTAIN KOONTZ: Yes.

19 MR. SHEPHERD: They might not have time, but
20 on another night they look and see if there is extra
21 property to be taken care of?

22 CAPTAIN KOONTZ: Correct.

23 MR. SHEPHERD: That's all I said, your
24 Honor. Thank you.

25 THE COURT: You say, sir, that it said "do

1 not destroy," and then it says "per Lieutenant Dugan"?

2 CAPTAIN KOONTZ: Yes.

3 THE COURT: So it clearly sets out that the
4 order "do not destroy" was pursuant to a person who had
5 authority to do that?

6 CAPTAIN KOONTZ: Yes.

7 THE COURT: Because Lieutenant Dugan is the
8 person --

9 CAPTAIN KOONTZ: Yes.

10 THE COURT: -- that would be in charge of
11 the overall property room.

12 CAPTAIN KOONTZ: That's correct. He was the
13 one that I assigned the detail to when we received your
14 Court order.

15 THE COURT: So if someone saw "do not
16 destroy per Lieutenant Dugan, they would know what that
17 meant.

18 CAPTAIN KOONTZ: Yes.

19 THE COURT: Because they would know the
20 lieutenant would be the person over them and over the
21 room?

22 CAPTAIN KOONTZ: Correct.

23 THE COURT: -- had authority to put that
24 on.

25 CAPTAIN KOONTZ: That's correct. So any

1 normal person you would think would just call Lieutenant
2 Dugan the next day and ask him why does it say "do not
3 destroy"?

4 THE COURT: All right. That's all I have
5 for you right now.

6 CAPTAIN KOONTZ: Okay. Thank you, your
7 Honor.

8 THE COURT: Thank you. Let me just see if
9 the Marshal -- I am not suggesting you do -- if Marshal
10 Crossman has any additional comments.

11 DEPUTY CROSSMAN: No, sir.

12 THE COURT: All right. Like I said before,
13 because Officer Morlan is facing a disciplinary hearing,
14 I have decided that I would not put him on here. I am
15 not saying what I will do going forward, if anything. I
16 am not making a commitment about that.

17 But today I think the better course is to
18 let him go through that disciplinary proceeding, and I
19 don't want to have anything that he would want to say
20 there preempted by what he might say here. I want to
21 give him a chance to have a fair and full-blown hearing
22 on these matters within the Mahoning County system.

23 Counsel, if there is nothing further that we
24 need from Mahoning at this time, I would be prepared to
25 dismiss them, and then we will proceed with a brief

1 discussion.

2 MR. THOMPSON: Sorry, your Honor.

3 Before we excuse them, can we just get
4 clarification of what exact day the property was
5 destroyed?

6 THE COURT: All right. The lieutenant get
7 that to us, Captain.

8 CAPTAIN KOONTZ: Yes. I am looking now.

9 (Pause.)

10 CAPTAIN KOONTZ: Sorry, your Honor. I am
11 trying to find the right paper here.

12 THE COURT: That's all right. Take your
13 time.

14 CAPTAIN KOONTZ: So it May 6th of 2024.

15 THE COURT: May 6th? All right.

16 Just one moment. Let me see if there is
17 any --

18 MR. THOMPSON: Do you know, is it correct
19 Mr. Durachinsky got back on May 7th. Is that accurate,
20 do you know?

21 CAPTAIN KOONTZ: I don't know when he came
22 back, but it was destroyed on May 6th. That's what is
23 written down by Deputy Morlan when he destroyed it.

24 THE COURT: All right. Mr. Shepherd
25 anything further?

1 MR. SHEPHERD: No, your Honor.

2 THE COURT: All right. Thank you for coming
3 and being here. You understand my reason for calling
4 you.

5 CAPTAIN KOONTZ: Yes.

6 THE COURT: I had issued an order because I
7 thought it was important to do so, and I didn't think it
8 would interfere with jail things, and I didn't try to
9 oversee that, but this was a particular case that I felt
10 the request made was reasonable I would say. I would say
11 not required but a reasonable request.

12 CAPTAIN KOONTZ: Yes. And I just want to
13 apologize to the Court and the Government for not
14 following your order, your Honor.

15 THE COURT: Well, I appreciate that.

16 We have got now -- I am going to let you go.
17 We have got to figure out now kind of our steps going
18 forward. All right. You are excused.

19 CAPTAIN KOONTZ: Thank you.

20 THE COURT: And Deputy Crossman, you can
21 remain if you wish, but you are free to go also.

22 CAPTAIN KOONTZ: Thank you, sir.

23 THE COURT: All right. First, let me just
24 indicate that I received a request from the person
25 writing up the evaluation in regard to Mr. Durachinsky

1 where there will be a recommendation as to whether he can
2 be restored to competency. The person requested an
3 extension of time until the end of this month. So that's
4 just the latest news on that.

5 I don't know what date Mr. Durachinsky came
6 back, but I was informed that he was back, and second --
7 well, let me ask you, Mr. Thompson, they talked about
8 three disks of discovery that you or one of the attorneys
9 provided.

10 Are you familiar with what that is?

11 MR. THOMPSON: The disks were provided by
12 prior counsel, your Honor.

13 THE COURT: Was what?

14 MR. THOMPSON: Was provided by prior
15 counsel. I am not certain exactly what is on them.

16 THE COURT: Okay. Does Mr. Durachinsky know
17 what's on them?

18 THE DEFENDANT: Yes, your Honor. I believe
19 one disk was an initial discovery disk provided early on
20 after indictment. I believe another disk was logs from
21 the laptop that we requested later on that year, and I
22 think a third disk might have been a copy of transcripts
23 from the suppression hearing.

24 THE COURT: Okay. And you would be able to
25 get those back, whatever is there?

1 THE DEFENDANT: Yeah. If those were lost,
2 presumably those could be recovered.

3 THE COURT: Now, can you -- Mr. Thompson, I
4 am going to ask him these questions.

5 Is that okay?

6 MR. THOMPSON: Yes, your Honor. I know
7 Mr. Durachinsky has things he wants to say to the Court
8 as well.

9 THE COURT: I know. But I just want to make
10 a record in terms of how many bags he had, what was in
11 the bags if he recalls and so forth, so that kind of
12 thing.

13 So this is just factual information about
14 that. It is not about the case or anything that can be
15 inferred to be related to the merits of the case. That's
16 how I view it.

17 Is that --

18 MR. THOMPSON: Yes, your Honor. We are
19 actually hoping to put that kind of information on the
20 record today. Thank you.

21 THE COURT: Mr. Durachinsky, how many bags
22 were there?

23 THE DEFENDANT: I don't know specifically.
24 What I do remember is, when I returned to Mahoning back
25 in November, I went through the property with a deputy

1 before they would let me bring it back up into
2 population, and I believe there were three brown bags,
3 which we left down there after I had taken my legal
4 material and most of the commissary that I had.

5 And so I believe those three brown bags
6 while I was still back at Mahoning back in the fall
7 contained my numerous books. Some of the paperwork,
8 which they withheld from population when I first got
9 there, because it came from another jail as well as I
10 think some clothing -- yeah, my clothing -- that I was
11 not allowed to bring back into population because, you
12 know, it has colors on it.

13 When I left in December, I remember having
14 to quickly pack up property into, I believe, two black
15 garbage bags, and I remember telling the deputies that I
16 can't take that property with me, and that we have a
17 court order for them to hold it.

18 So I was able to get Lieutenant Dugan's
19 attention because he was walking around that morning, and
20 he said he would take care of it and presumably there
21 would have been the three brown bags that were there
22 while I was there last fall, plus potentially two other
23 bags containing however they stored those two black
24 garbage bags. So there may have been five total.

25 THE COURT: Books, what kind of books did

1 you have?

2 THE DEFENDANT: Primarily text books.

3 THE COURT: How many do you think?

4 THE DEFENDANT: I have gone over this with
5 my mother. She checked her records, and so it appears
6 that I had about 20 books that had been sent into
7 Mahoning as well as four books, which were left in
8 property, because they came with me from the previous
9 jail.

10 THE COURT: You had that many books?

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: Would those be in one brown bag,
13 or what kind of bag would that be?

14 THE DEFENDANT: I think when we had stacked
15 them, I think I had combined -- the way we ended up doing
16 it was putting half of my legal paperwork on the bottom
17 of each of two bags and then I think placing books on top
18 of that so that the bags were stable.

19 THE COURT: Yeah, because 20 books, that's
20 some heavy weight.

21 THE DEFENDANT: Yeah. But I had been at the
22 jail for four years at that point, and you know, I like
23 having reference material to keep learning from and to
24 use for my own projects that I work on.

25 THE COURT: You say "projects" that you work

1 on. Unrelated to your case?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: And I am not asking you for any
4 details, what other kind of projects do you work on that
5 require books?

6 THE DEFENDANT: So I actually have an
7 overview of some of this prepared to go over what was
8 lost. So for instance, a large project of mine has been
9 related to stocks in investing. So a decent number of
10 those textbooks that I had were related either to
11 quantitative finance or to things like day trading or
12 just general information on how the stock market works.

13 THE COURT: So those are things that you did
14 that occupied your time when you were there?

15 THE DEFENDANT: Yes, your Honor.

16 THE COURT: And clothing, how much clothing
17 was there, what kind?

18 THE DEFENDANT: So I had dress clothes,
19 which I did take with me to Chicago, which I then had to
20 mail out when I got there. There was not much in the
21 form of clothing. It was probably about a few sets
22 of whites, and Mahoning on Monday did replace much of
23 the small amounts of commissary and clothing that I
24 lost.

25 THE COURT: How did they replace that?

1 THE DEFENDANT: They -- I believe they just
2 got it from commissary. So for instance, there were two
3 white T-shirts. Well, there was one white T-shirt and a
4 thermal top that was gone, and so they said they didn't
5 have the thermal top, but they gave me two white
6 T-shirts. And actually, the T-shirt I am wearing is one
7 of those.

8 They also gave me three pairs of socks to
9 replace the three pairs of socks that were lost.

10 THE COURT: You didn't lose much in the way
11 of clothing?

12 THE DEFENDANT: No. Those have been
13 replaced, similarly basic necessities like a wash rag and
14 shower shoes, they replaced those on Monday. They also
15 gave me writing pads and manila envelopes, which had been
16 lost.

17 THE COURT: Okay. And you told them
18 that you had lost those, those things were in the
19 materials?

20 THE DEFENDANT: Yeah.

21 THE COURT: And they sought to replace what
22 they could?

23 THE DEFENDANT: Yes. Captain Koontz told me
24 to make a list, and so I made a list of non replaceable
25 property, other than food and books.

1 THE COURT: Okay. And when you went away
2 for the competency hearing, did you take any materials
3 with you or leave with family members.

4 THE DEFENDANT: No. When I went away to the
5 competency evaluation, they don't let us take any
6 material. When I left over the summer, I tried to take a
7 single sheet of paper with some things that I was working
8 on, and the deputies took it out of my pocket and threw
9 it away because they said the Marshals don't allow
10 paperwork to go with you.

11 THE COURT: So you didn't take anything with
12 you either time?

13 THE DEFENDANT: No. Only my clothing that I
14 was wearing.

15 THE COURT: And you stored things at
16 the jail. You didn't store anything with family
17 members?

18 THE DEFENDANT: No.

19 THE COURT: Okay. Now, let's get back to
20 what was in the bags. The clothing you talked about and
21 sought to replace that, and you had a lot of books mostly
22 related to day trading and stock trading.

23 Did you have other books relating to matters
24 pertaining to the case?

25 THE DEFENDANT: No. There was a generic

1 book, which someone had given me on legal arguments.

2 THE COURT: Yeah.

3 THE DEFENDANT: Okay.

4 THE COURT: But not directly relevant to the
5 charges?

6 THE DEFENDANT: No. None of the books were
7 directly relevant to this case specifically.

8 THE COURT: All right. Now, what else did
9 you have in your bags?

10 THE DEFENDANT: So I had a very large amount
11 of paperwork, both paperwork related to the case as well
12 as paperwork related to projects I was working on.

13 THE COURT: Okay. I am concerned about
14 everything that was destroyed because I told them not to
15 do it, but I am particularly interested in any paperwork
16 -- what kind of paperwork did you have that was related
17 to the case?

18 THE DEFENDANT: It might be best for me to
19 read what I prepared.

20 So I have lost thousands of hours worth of
21 organized research notes from case law for numerous
22 issues in this case. For instance, our motion to
23 dismiss, the original indictment for failure to state an
24 offense; made a number of legal arguments based on my own
25 research over the years, filtered and refined by counsel.

1 THE COURT: Let me ask you about that. I
2 don't mean to keep you from putting on the record what
3 you have in mind.

4 Notes related to my past legal rulings, is
5 that what you are talking about?

6 THE DEFENDANT: No. These are notes related
7 to my own research, some of which has been incorporated
8 into motions, which have resulted in rulings but much of
9 which is still -- would still be relevant.

10 So for instance, when I would spend time
11 researching case law, I would try to organize little
12 tidbits from cases based on the topics and subtopics, and
13 I would also make notes regarding potential legal
14 strategies and include citations and quotes directly
15 relevant to those.

16 THE COURT: Okay. And so you kept a lot of
17 notes?

18 THE DEFENDANT: Yes, your Honor.

19 THE COURT: And those would have been about
20 a bag's worth?

21 THE DEFENDANT: Although it was split up
22 into the two bags, but then they had books on top of it.
23 I believe you could fit all of my legal paperwork into a
24 large stack of paper that would fit in a large brown bag.

25 THE COURT: Okay. So you could get at least

1 that in a brown bag, maybe more?

2 THE DEFENDANT: Yeah, so about a couple feet
3 of paper maybe.

4 THE COURT: And so a lot of it -- I am just
5 trying to clarify -- a lot of it had to do with your own
6 research, musings, thought process about legal issues in
7 the case?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: And you had -- tell me if I am
10 wrong because I am not trying to put words in your mouth
11 -- you shared your thoughts and research when
12 appropriate, where you thought appropriate, when you
13 thought an issue that was coming up or an issue to alert
14 lawyers to, you made them aware of that.

15 THE DEFENDANT: Yes, your Honor. I would
16 try to bring up issues and try to quote from case law
17 where I felt relevant using my notes as reference.

18 THE COURT: Yeah. And how do you do your
19 legal research?

20 THE DEFENDANT: So the first couple of years
21 I was locked up on this case, months after I had been
22 arrested, I started to realize that I am going to have to
23 take this case seriously to understand what's going on.

24 And so I got in the habit of going to the
25 law library at the Northeast Ohio Correctional Center

1 virtually every chance I could get throughout the day.

2 And so there I was able to browse -- browse
3 LexisNexis case law that had been preloaded on those
4 computers. I was able to organize snippets of case law
5 in word processor document, which I had printed out at
6 various times and brought with me when I was moved from
7 there.

8 I would also review discovery on those
9 computers, and I was able to then research case law that
10 might be relevant to that discovery there. When I was
11 moved from Northeast Ohio Correctional Center, Cuyahoga
12 County eventually set up a computer with LexisNexis.

13 However, the majority of the last four or
14 five years I have been at Mahoning, and so initially they
15 had Akron law students coming in who I would ask to print
16 out case law. Primarily back then it was preparing for
17 the suppression hearing.

18 Around the time of the Pandemic, they
19 brought in tablets and kiosks, which is now their law
20 library, so they have an app, which allows us to browse
21 case law.

22 THE COURT: You are allowed to do that
23 now?

24 THE DEFENDANT: Yes. I am able to browse
25 case law on the tablets at Mahoning County.

1 THE COURT: Now, there are a range of issues
2 that have come up in the course of your case, and you
3 had, of course, lawyers representing you. And I
4 understand you are the person who is faced with, you
5 know, the case and possible penalties, but the lawyers
6 have had interaction with you. You may have some
7 thoughts about that interaction.

8 They filed motions for you. I have ruled on
9 them.

10 Now, I understand the need -- your felt need
11 for having your notes and papers. And I truly was trying
12 to preserve those for you, not because I felt like the
13 law required me to do it, but it felt like the right
14 thing to do. So I wanted you to have those.

15 But what -- you have a range of issues that
16 you felt that going forward you need to address for which
17 you don't have papers.

18 THE DEFENDANT: Yes, your Honor.

19 So for things affecting the case, I have
20 already mentioned my research related to case law because
21 there are still more motions that I would have wanted the
22 file, and those notes I believe would have been relevant
23 also for appeals of these issues later on. In attempting
24 to re-do all this research would potentially take years,
25 cause more delay.

1 I also lost copies of my written
2 correspondence with my attorneys as well as to members of
3 the Court and the Government and for continuing FOIA
4 request related to this case.

5 So I am hoping that all seven years of
6 this still exists out there, and that my past attorneys
7 will remember which documents they have sent me in the
8 past.

9 THE COURT: Well, you may not need all the
10 documents. You may want them, but you know, if there are
11 particular ones, you have to think about those. We can't
12 recreate everything that you had there, and I understand
13 that would be desirable for you, but that's not going to
14 be possible.

15 And so every correspondence you had just
16 because you would want a file of them is not going to be
17 possible for purposes of the case I don't think. So if
18 there are particular things that relate to certain issues
19 or something like that, you can make them aware of it,
20 but we won't be able to totally recreate everything you
21 had.

22 But I am trying to make sure that you have
23 the things you need. When I say "you," right now you
24 have counsel, and I am just going the extra step to work
25 with you directly around those issues, of course, with

1 your counsel's involvement.

2 But you know they are quite capable. I
3 think you heard me say before as lawyers in the case they
4 haven't lost any materials. They have the discovery,
5 which was provided by the Government, and so I am not
6 treating this as a case where all of the materials that
7 will be needed to defend you are gone. I just want to be
8 clear about that. That's not my view.

9 You know, the Government has -- we have got
10 experts that have been used, certain reports. We have
11 got a lot of discovery, which has been made available to
12 the lawyers. The lawyers have not lost in excess to any
13 of that. So to the extent that those things need to be
14 reviewed with you for purposes of issues and trial,
15 that's still available.

16 So you know, I want you to be able to go
17 about your thinking about the case and gathering whatever
18 information you want, but I don't want to create the
19 impression that I think your case has gone down the tubes
20 because you don't have your notes. I am trying to work
21 with that, so that you can have what you need to assist
22 your counsel in your defense.

23 And you have access to legal research at
24 Mahoning, right?

25 THE DEFENDANT: Yes, your Honor. I have

1 access to case law, but it took years to do all the
2 research that I have done.

3 THE COURT: But I am not sure that all the
4 research you did is going to be translatable into
5 something you are just going to have to have for purposes
6 of defending yourself. There are a lot of things you
7 looked into, a lot of thoughts and ideas you had.

8 Now, you are going to have to focus on what
9 are the issues before the Court and work with your
10 lawyers on getting the relevant information, and then you
11 do your research around that.

12 Don't go back trying to recreate everything
13 you had because I don't think that would be a good use
14 of time. I think you have to be forward looking.

15 THE DEFENDANT: I think there are still
16 issues though that in 2018, when I got the majority of
17 those discovery disks, I had taken notes thoroughly
18 analyzing the FBI reports, and I had notes from the only
19 two occasions I had to inspect my own laptop, and that
20 was six years ago.

21 I had based some of that on my own
22 recollections from the best I could, and now that's so
23 old. And then, also, I have a potential issue where,
24 when I was only months in on this case, in part, as a
25 recommendation from my attorney at the time, I tried to

1 write out some lists of some relevant things from memory
2 before I'd forget, and these were things that might
3 be needed for trial or sentencing or for property
4 recovery.

5 And so seven years later I don't think I can
6 recreate those lists to the extent that I was able to
7 back then.

8 THE COURT: All right.

9 THE DEFENDANT: Another issue along with my
10 notes, I would take meticulous notes of what's happening
11 in the case in order to preserve whatever might
12 eventually be relevant.

13 So even if I do get a copy of whatever is
14 currently going on in the case or whatever is on the
15 docket, I can't recover the notes that I took from
16 discussions that have been had.

17 So like after Court hearings, I would know
18 to keep things that were said in Court as well as when
19 talking with my lawyers before the hearing. After every
20 single meeting with an attorney, I would document what
21 was done at the meeting and what was said. And I would
22 try to star important details for later reference, but
23 now, I can't review past advice fram attorneys going back
24 seven years and good or bad.

25 So I don't even know if I can get a fair

1 appeal based on ineffective counsel now.

2 I have also -- I lost the notes that I took
3 during the various interviews I did with my parents early
4 on regarding the seizure of my laptop, which, in part,
5 formed our suppression motion, but those were based
6 entirely on recollections closer to the time.

7 THE COURT: All right. Let me -- and I
8 wanted you to be able to have the opportunity to talk
9 about the nature of the information that was there, and I
10 think you have given me a pretty broad picture of that,
11 conversations that you had with attorneys, information
12 you shared with your parents or those kinds of things.

13 You know, if you are going to appeal a case,
14 you would have a lawyer presumably -- maybe you
15 wouldn't -- on a case when they are looking at how other
16 lawyers performed on your behalf. They will have a
17 record there.

18 It is not that you aren't important in terms
19 of a conversation with them, but they will have a legal
20 record to see what they did and whether it appears to be
21 reasonable in light of the whole record.

22 I understand your feeling about your notes
23 and your involvement in the case, and I can see that an
24 individual would be upset that they had lost the
25 materials they had, whether it was useful in the case or

1 not in the case, it could be, psychologically useful in
2 that sense.

3 So you were talking about a lot of things,
4 and we have got -- we talk about legal issues in a case.
5 A lot of the things you are talking about don't go
6 directly to legal issues, but I wanted to know about,
7 about your thinking.

8 We have clarified that there are a lot of
9 books and materials in your bags that were not relevant
10 to the case. I don't mean that you are not upset about
11 them or that you are not justified being upset about
12 them. But there are a lot of things.

13 And then there are these notes you kept
14 about your case, and I understand that, your concern
15 about those and notes you had with lawyers. But what we
16 have to figure out now going forward since you do have
17 lawyers and we do have discovery and so forth, what is it
18 that is missing that is essential, if anything, that you
19 would need time to work on?

20 I don't see a need for delay in a case where
21 discovery is provided and where it is information that is
22 pertinent to the case that has been shared. It is not
23 information in your possession. It is your thought
24 processes, but mostly the information is not in that bag,
25 information, underlying information in existence.

1 So let me turn to Mr. Thompson. I am not
2 sure we have any final answers here today, and we will
3 have to come back as soon as we receive that report from
4 the Bureau, but so we may need to delay somewhat, but go
5 ahead and give me any thoughts you have at this time.

6 MR. THOMPSON: Your Honor, it is going to
7 take considerable work to get back to where we were. I
8 would note the biggest concern I think is the notes that
9 Phil took related to the facts of the case.

10 He took those notes while viewing discovery,
11 talking with his lawyers, but he took them closer in time
12 to the incidents that he was remembering, but now, as he
13 correctly indicated, his memory is going to be somewhat
14 faded.

15 I don't know that that can be recovered, and
16 it is not -- these are not simple facts so to speak. As
17 your Honor is probably well aware already it is going to
18 become painfully aware during the trial.

19 This is an incredibly complicated case of
20 incredibly complicated computer programs and
21 computer-related information. Phil has an incredible
22 memory, but I don't know that there is any way to get
23 that back to where it was, that being that the notes he
24 took related to the specific programs and computers
25 accessed and so forth, what exactly was done, what

1 exactly was written, what exactly happened, I don't know
2 that he can -- we can get there.

3 THE COURT: Let me stop you for a moment,
4 and I am not stopping you permanently. You note he has
5 an incredible memory. That was my impression, but I am
6 not here to draw that conclusion in an ultimate sense.

7 Second thing is, if he is talking about what
8 he told to lawyers and he doesn't remember the facts and
9 details that he told them and they are not as clear to
10 him now as then, we have got access to every single
11 lawyer that he had had, and if they have to be paid
12 through CJA or whatever, they will be.

13 MR. THOMPSON: He also mentioned that, your
14 Honor. But the thing that struck a cord with me that I
15 am most concerned about is not notes of what he said to
16 his lawyers, what his lawyers said to him so that he can
17 challenge the advice that was given to him on a 2255 or
18 something for ineffective assistance of counsel on direct
19 appeal or what not, it is the notes regarding what
20 happened in the case, notes regarding what he did or
21 didn't do in the case.

22 Like his recollection of events is now
23 dimmed by time. He wrote stuff down on his lawyer's
24 advice, so that that dimming of by time wouldn't hurt him
25 if this case dragged on as it has because of the

1 complexity of it. Those are the notes that worry me the
2 most.

3 I would also indicate, just as I see it --
4 and I have discussed this with Phil -- there is a number
5 of like same general issues. I don't know what your
6 Honor's intention is on order of attack is -- we still
7 have Mr. Durachinsky's competency issue.

8 When I receive that, I will have to review
9 that with the expert I hired to determine whether or not
10 -- you know, what our position is, which might again be
11 contrary to Mr. Durachinsky's position, which is what led
12 him to issue number two, his pending appeal, and whether
13 or not that is something that needs to play out before or
14 during the continuing of the case at this level.

15 And number three, his request for new
16 counsel, which is something that is looming, and I think
17 the correct order that would be last, but I am not a
18 hundred percent certain of that.

19 I just offer for the Court like that seems
20 to be where I see us.

21 And finally, I would ask if Phil could be
22 permitted -- it would not take more than a couple minutes
23 -- for him to read the rest of what -- his recollections
24 of what those notes were so, there is a record of that.

25 Thank you.

1 THE COURT: All right. I thought we were
2 getting close to the end of that. I have given him
3 quite a bit of time. If he has got more, he needs to
4 condense it in a category because I have given him a lot
5 of time.

6 MR. THOMPSON: He is very close, your Honor.

7 THE DEFENDANT: All right. One thing I
8 would just like to point out, recollections, my best
9 attempts to recall things related to facts for the case
10 came from 2017 and 2018 because that's when I was being
11 relayed information by my initial counsel as well as in
12 2018 when I was given those discovery disks.

13 Since then I haven't been given very much to
14 go on, and for the superseding indictment, I still
15 haven't been given a list of victims for those counts or
16 given a chance to inspect those computers.

17 THE COURT: So you are talking about things
18 since that time?

19 THE DEFENDANT: So I would have had to look
20 back on my notes to see what would have been relevant to
21 these new charges now. Separate from that, I did want to
22 at least put on the record, although it is not
23 necessarily -- it doesn't necessarily prejudice the
24 outcome at trial -- but I just want to put on the record
25 some things about the personal prejudice caused by this.

1 So I had already mentioned that I had over
2 two years of an ongoing project related to collecting
3 stock data from newspapers working out equations --

4 THE COURT: Okay. Come on. Hurry up with
5 that because --

6 THE DEFENDANT: So I have been trying my
7 whole time locked up to try to use my time productively,
8 so that I would have my best chance when I got out.

9 I had a big long list of things that I've
10 tried, calculations based on it, and I wanted to be able
11 to show that to any potential employer or business
12 partner to show that I have experience. A separate thing
13 that I worked on for about a year was related to
14 optimizing modular arithmetic.

15 THE COURT: I am going to give you three
16 more minutes.

17 THE DEFENDANT: All right. And so with
18 that, I had come up with over hundreds of hours, various
19 techniques, which I believe were novel and which I wanted
20 to test when I got out and potentially to find a
21 professor to see if I could make some research papers out
22 of it or even do a Masters thesis.

23 I have spent thousands of hours with
24 newspapers, my books, and podcasts, and so I had lists of
25 ideas of things to look into when I get out, list of

1 investing ideas, references for things to investigate
2 because I wanted to use that time to do the brainstorming
3 so that I would have lots of things to look into when I
4 got out.

5 I have lost the dates and copies of medical
6 events and grievances, which may be impair future civil
7 suits. I lost my personal correspondences with friends
8 early on who since became too busy to stay in touch.

9 It was suggested early on that I should
10 write a book about my experience, and I had notes of
11 interesting events and mundane anecdotes as well as
12 contact info of people I have met throughout the years.

13 But I can't get that back.

14 And so I just wanted to give you some idea
15 of how I have tried to stay productive locked up and how
16 this basically took away seven years of my work.

17 THE COURT: I respect that, and I do
18 understand. I can't totally understand how another
19 person feels because I am not the other person, but I
20 think I have a glimpse into how you might feel with
21 losing all those things that you worked on and not having
22 them.

23 That I understand. Maybe I don't understand
24 it like you feel it, but it is frustrating to say the
25 least. And I understand that.

1 I am trying to concentrate on the case, not
2 because I don't care about the rest of it, but because
3 that's the part that I have in my hands. I am going to
4 see if Mr. Shepherd has any comments you want to make,
5 statements or anything else?

6 MR. SHEPHERD: Your Honor, the only thing I
7 would state is, I believe it is probably too soon to tell
8 the ultimate impact on the case, and we will have to wait
9 for Mr. Thompson to continue to figure that out.

10 I would say I do agree with Mr. Thompson, he
11 referred to the pending appeal in this case, and I guess
12 with my comment on that is, my initial take on that is,
13 although I would have to do a little further research, is
14 that until that is resolved it may very well divest the
15 Court of jurisdiction over the ultimate competency
16 finding in this case because it relates to an appeal of
17 the Court's order from December, so --

18 THE COURT: What is he appealing, what is
19 being appealed?

20 MR. SHEPHERD: He appealed the Court's
21 December order committing him for restoration of
22 competency to the custody of the Attorney General. That
23 is still pending. His brief has been filed. The
24 Government's brief is due later this month, and then the
25 Sixth Circuit will have to consider that issue and rule

1 on it.

2 So I just -- I bring that in agreement with
3 Mr. Thompson -- bring that to the Court's attention in
4 terms of procedure going forward once -- even when the
5 Court -- I guess we would have to get back to the Court
6 -- excuse me -- I believe what I would suggest is this:

7 I will confer with Mr. Thompson while we are
8 waiting for the report about the impact, what we believe
9 the impact, if any, is on that pending appeal, and then
10 we can report to the Court whether there is a
11 jurisdictional issue for the Court to move forward before
12 the appeal is resolved, your Honor.

13 THE COURT: I agree that we should come back
14 after the report comes in, and we can assess all the
15 relevant issues at that time, and it may be that the
16 appeal is pending.

17 It doesn't mean that we necessarily have to
18 completely stop what we are doing. We can work toward
19 being organized to move forward should the Court rule
20 against him. If they rule in his favor, then, of course,
21 that's a different matter.

22 MR. SHEPHERD: Yes, your Honor. And I think
23 issues like today that deal with sort of the, I guess,
24 administration of the conditions of his pretrial
25 detention, we don't believe there is any issue with the

1 Court continuing to resolve these matters and deal with
2 these matters. It would just be a competency issue that
3 we would need to research further when we all come back
4 together next and discuss further as you suggested, your
5 Honor.

6 THE COURT: All right. Is there anything
7 further?

8 MR. THOMPSON: Your Honor, if I could just
9 add one more thing from what's missing, Mr. Durachinsky
10 indicates that he had notes related to his assessment by
11 Dr. McConnell. That's the forensic psychologist who we
12 retained to have him evaluated.

13 The notes were related to certain questions
14 that Mr. McConnell asked, the way he asked them, and the
15 way that Phil responded, and Mr. Durachinsky feels that
16 those notes would be useful going forward in litigation
17 related to his competence.

18 Thank you.

19 THE DEFENDANT: (Nodding affirmatively.)

20 THE COURT: He has a got a copy of the
21 report though?

22 MR. THOMPSON: I don't know that I have ever
23 sent him a copy of the report. Do you have a copy of the
24 report?

25 THE DEFENDANT: I do have a copy of the

1 report, but he didn't go into detail over really how the
2 questions were asked.

3 THE COURT: I understand the point
4 Mr. Thompson made. I just want to say, you got a copy of
5 the report?

6 THE DEFENDANT: I do. Well, I do
7 not currently because it was destroyed but I could
8 get --

9 THE COURT: We can get a copy of it. We can
10 get a copy of the report, and then, you know, you will
11 have it. All right? That's all we have. That's all.

12 (Hearing concluded at 11:25 a.m.)

13 - - - - -

14 C E R T I F I C A T E

15 I, George J. Staiduhar, Official Court
16 Reporter in and for the United States District Court,
17 for the Northern District of Ohio, Eastern Division,
18 do hereby certify that the foregoing is a true
19 and correct transcript of the proceedings herein.

20 s/George J. Staiduhar
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